

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of
Truth-in-Billing
and
Billing Format

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CC Docket No. 98-170

To The Commission:

COMMENTS OF THE ELECTRONIC COMMERCE ASSOCIATION

ELECTRONIC COMMERCE ASSOCIATION

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November 13, 1998

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On behalf of the Electronic Commerce Association, I am submitting the following comments with regard to the Truth-in-Billing and Billing Format Notice of Proposed Rulemaking ("Truth-in-Billing Initiative").

I. Introduction to the Electronic Commerce Association.

The Electronic Commerce Association ("ECA") is an advocacy organization dedicated to promoting the growth of electronic transaction technologies and facilitating the development of electronic commerce. Among other things the ECA strives to educate its members, regulators, and the public regarding issues and legislation that will affect the way business is transacted in the digital age.

The ECA's membership includes, but is not limited to, providers of sophisticated and enhanced telecommunications services in emerging markets. Among the services offered by

ECA's members are web hosting and design, calling card services, pre-paid calling services, conference and call forwarding services, voicemail services, long distance services, internet telephony services, and various information and pay-per-call services. All members are independent entities, i.e., are not affiliates of local exchange carriers (LECs). In some cases they compete with LEC's in the provision of certain services. Thus ECA members enhance consumer choice by providing a wide variety of enhanced and information services. ECA members also provide much-needed competition to LEC service offerings.

The ECA's members rely on LEC billing and collection services for their products. Millions of Americans have benefited from the efficiency, ease, and convenience of receiving bills through their local telephone company. Recent actions by the LEC's are having a profound effect on the ability of a number of ECA members to continue providing these services.

II. The Truth-in-Billing Initiative's Goal of Maximizing Consumer Choice and Control would be Advanced by the Commission Exercising Title II Jurisdiction over Billing and Collection.

The Commission's Truth-In-Billing Initiative seeks to provide end-user customers with clear, accurate billing information to ensure that consumers are treated fairly.¹ The relationship between the LECs and consumers cannot be viewed in isolation, however, but rather must be considered in the context of the entire billing and collection chain. Consumers should have the ability both to reject unwanted services and to accept the services that meet their needs. Unfortunately, the current unregulated manipulation of billing and collection by the LECs allows these monopolists to serve their self interest in limiting the range of services

available to consumers. In the face of this constraint on consumer choice and control, the FCC should reassert Title II jurisdiction over billing and collection in order to guarantee that consumers can choose from the entire range of service options available in the market. As discussed below, this is an area of telecommunication policy in which the goals of consumer protection and competition are consistent. Both point to FCC regulation to ensure the uniform and non-discriminatory provision of services to consumers.

No amount of clear, accurate billing information will allow the FCC to achieve the Truth-in-Billing Initiative's fundamental goal of fairness to consumers, however, if their actual bills reflect monopoly prices, and the consumers are left with no alternative service providers. The ECA believes that the issue of third-party billing should be an integral part of the Commission's examination of consumer choice in this proceeding.

In this context, the ECA urges the Commission to exercise Title II jurisdiction over all billing and collection services, including "third party" billing arrangements. Such action is the only way the Commission can preserve and promote competition in the enhanced services and information services markets. Consumer choice has expanded by options such as 10XXX long distance choices, 900 number services providing information on the weather and stock information, and collect calling.² Absent third-party billing arrangements, many of these services may not exist, because the cost of direct billing would be prohibitive and otherwise impractical .

¹ Truth-In-Billing and Billing Format, Notice of Proposed Rulemaking, CC Docket No. 98-170, FCC 98-232. __ FCC Rcd. ____ (released September 17, 1998).

III. An Absence of Competition in the Market for Telecommunication Services Severely Limits Consumer Choice.

ECA maintains that LEC, as opposed to IXC³, billing is not subject to competition. In fact, the LECs have used the Commission's lack of oversight to crush their competition. As documented by MCI, the third-party billing and collection abuses by LECs has a deleterious impact on competition in the market for telecommunication services.⁴ Moreover, the cost of direct billing and collection is prohibitive for independent providers of enhanced and information services. In response to MCI's Petition, the LECs assured the Commission that they would continue to provide third party billing and collection services. However, the LECs have cut-off many independent service providers from access to the LEC billing envelopes, presumably to frustrate the efforts of competitors in the provision of LEC services. Therefore, the Commission should act to re-regulate LEC billing and collection for third parties.

IV. Commission Regulation of Billing and Collection Services is Necessary to Fulfill the Mandate of the Act and to Protect Consumers.

Since the Commission deregulated billing and collection, Congress passed the landmark Telecommunications Act of 1996, which amended the Communications Act of 1934 ("Act"). As a result, the Act now contains two provisions that mandate Commission intervention into the billing and collection market: Section 272 and Section 257.

² See Petition for Rulemaking, Billing and Collection Services Provided by Local Exchange Carriers for Non-Subscribed Interexchange Services, filed by MCI Telecommunications Corporation, May 19, 1997 (RM-9108) at 3-4 (hereinafter, "MCI Petition").

³ In 1993, the Commission found that interexchange (IXC) billing and collection services were a communications service, but were not entitled to Title II jurisdiction because they "open to even greater potential competition than LEC billing and collection services." Audio Communications, Inc. Petition for a Declaratory Ruling that the 900 Service Guidelines of US Sprint Communications Co. Violate Section 201(a) and 202(a) of the Communications Act, *Memorandum Report and Order*, 8 FCC Rcd. 3697, 8699 (1993).

The Telecommunications Act of 1996 recognized the BOCs' historic anticompetitive behavior and adopted a 14 point checklist to ensure adequate competition before certain BOCs could enter the in-region long distance market. To date, no BOC has met the test. In order to assure a level playing field, LECs that provide services through structurally separated subsidiaries must provide those same services to third parties. 47 U.S.C. 272(c). The Commission specifically included billing and collections services in this category.⁵

Further, Section 257 of the Act requires the Commission to identify and eliminate "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications and information services, or in the provision of parts or services to providers of telecommunications services and information services."⁶ The Commission has interpreted the term "market entry barrier" to as "primarily intended to encompass those impediments to entry within the Commission's jurisdiction that so significantly distort the operation of the market and harm consumer welfare that they justify regulatory intervention."⁷

ECA believes the billing and collection function squarely meets these requirements. Several major LECs have ceased providing certain billing and collection services to third parties in an effort to stifle competition with their own information services business. The

⁴ MCI Petition.

⁵ "[W]e find that there are certain administrative services, such as billing and collection services, that unaffiliated entities may find useful. Further, as discussed above, we construe the term "services" to encompass any service the BOC provides to its section 272 affiliate, including the development of new service offerings. We conclude therefore that the protection of section 272(c)(1) extends to any good, service, facility or information that a BOC provides to its section 272 affiliate." Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, First Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 21905, 22007(1996).

⁶ 47 U.S.C. § 257(a).

⁷ Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, Report, GN Docket No. 96-113, FCC 97-164 (rel. May 8, 1997).


LECs are aware that absent third party access to their own billing envelopes, most independent providers will either cease doing business completely within the LEC's local service area, or, at a minimum, incur "prohibitively" increased costs to do business.⁸

V. Conclusion.

Absent Commission action to regulate third-party billing, end-user consumers ultimately will pay the price, as decreased competition inevitably leads to fewer choices and higher billing rates. The Act not only directs the Commission to be concerned about the LECs' manipulation of billing and collection to drive small, independent businesses from the market and bar new entry, but also grants the Commission authority to counteract this anticompetitive behavior by LECs. Indeed, the Commission's statutory mandate, as well as its fundamental obligation to promote the public interest, underscores the appropriateness of reasserting Title II jurisdiction over third-party billing.

Respectfully submitted,

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⁸ Three LECs have already ceased providing these services. See Communications Daily, November 1998, p. 5.